

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Broadband PCS C and F	)	
Block Installment	)	WT Docket 97-82
Payment Issues	)	DA 97-679
	)	

REPLY COMMENTS OF  
URBAN COMMUNICATORS PCS LIMITED PARTNERSHIP

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July 8, 1997

No. of Copies rec'd 0210  
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Urban Communicators PCS Limited Partnership, ("Urban Comm"), is the parent company of Urban Comm-North Carolina, Inc., which has acquired broadband PCS licenses for 10 Basic Trading Areas ("BTAs") in eastern North Carolina in the C Block and for 13 BTAs in Virginia, North Carolina, and South Carolina in the F Block. Urban Comm submits these Reply Comments in response to the Commission's public notice requesting comments addressing the C and F Block PCS financing terms. In these Reply Comments, Urban Comm submits the following: (1) the Commission should give great weight to the statements of the panel of financial industry experts who all recommended that the commission substantially restructure the C and F Block installment debt, (2) the Commission should allow C and F block licensees to choose from a number of options in restructuring their debt payments, and (3) the Commission has full authority to restructure C and F block payment obligations. Among the options the Commission should consider in allowing restructuring is the option proposed by Urban Comm in its initial Comments, filed June 23, 1997:

- Defer all payments without any accrual of interest for the first five years of the license term,
- Require interest-only payments in year six,
- Require payments of ten percent of the principal plus interest in each of years seven through nine, and
- Require full payment of outstanding principal and interest at maturity.

This proposal is illustrated by a chart which was attached as Appendix A to Urban Comm's initial Comments.

**I. THE COMMISSION SHOULD GIVE GREAT WEIGHT TO THE STATEMENTS OF THE PANEL OF INDUSTRY EXPERTS WHO ALL RECOMMENDED THAT THE COMMISSION SUBSTANTIALLY RESTRUCTURE THE C AND F BLOCK INSTALLMENT DEBT**

At the recent public forum regarding Broadband PCS C and F Block installment payment issues held on June 30, 1997, the theme of the day was "How Can The Commission Best Ensure That Broadband PCS C and F Block Licenses Are Used to Provide Service To The Public?"<sup>1</sup> There were two panels in which the first panel consisted of wireless industry licensees and the second panel consisted of financial community representatives. The Commission should rely heavily upon the recommendations of the second panel. The industry investment analysts who spoke possess significant expertise about the availability of financing in the telecommunications marketplace for C and F Block licensees in general. The analysts provided insights into the financial markets which can be relied upon by the Commission as an accurate portrayal of the actual financing opportunities

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<sup>1</sup> Public Notice, "Commission To Hold Public Forum Regarding Broadband PCS C and F Block Installment Payment Issues," June 17, 1997, DA 97-1267.

for the majority of C and F Block licensees. In this respect, the views of the investment analysts are aligned with interests of the Commission as the Commission strives to meet its statutory obligations regarding facilitating the participation of designated entities, as a group, in the provision of spectrum-based services.<sup>2</sup>

All five investment analysts on the second panel maintained that restructuring C and F Block license debt is imperative. Beyond this salient point, they varied only in proposing the form restructuring should take. Apart from the specifics of the proposals by individual panelists, all shared the common thread that restructuring must be substantial. They all acknowledged that changed circumstances, including: the year long lead obtained by the A and B licensees, the drastic change in market conditions subsequent to the C Block auction, and the unforeseeability of these factors during the development of both the present installment payment plan and individual companies' business plans, cause substantial restructuring to be the only reasonable choice.

The Commission is faced with a dilemma, which by definition requires the Commission to make difficult choices. If the Commission chooses to do nothing, the likely outcome is the default of many C and F Block licensees at varying times. Not only will reauction not yield the amount of license debt obligations that the Treasury currently anticipates receiving, but licensees will default at varying times when their financing options have dried up. Since the Commission can only reauction the spectrum as it comes back, reauction will not be a one time event; it will be a series of auctions over several years; it will not be administratively easy; and, it will not result in any presently predictable benefit to the Treasury. If the Commission engages only in minor debt

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<sup>2</sup> In re *Implementation of Section 309(j) of the Communications Act--Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348, paragraphs 227, 229.

restructuring, it will not facilitate financing for C and F Block licensees. The only clear choice is to engage in meaningful payment plan modifications like the one proposed by Urban Comm, or the even more substantial plans proposed by the financial experts who were panelists at the recent forum.

## **II. THE COMMISSION SHOULD ALLOW C AND F BLOCK LICENSEES TO CHOOSE FROM A NUMBER OF OPTIONS IN RESTRUCTURING THEIR DEBT PAYMENTS**

The Commission should offer C and F Block licensees a range of repayment options. Although the Commission must establish a rule or a procedure of general applicability, that rule or procedure need not be rigid. As evidenced by the variety of proposals from the industry experts and from the licensees themselves, there are a variety of ways to restructure the payment plan. Giving licensees a modicum of flexibility with regard to their payment obligations will enable them to choose a plan that best suits the particular circumstances of their financial and consumer markets.

Specifically, the Commission should allow licensees to choose between: (1) at least five years of no interest accrual and no payments due on their debt, as outlined previously in Urban Comm's Comments, or (2) to pay off their entire license debt at one time during the first five years at a 75-80% mark down from the face amount of the license debt. The industry financial analysts at the public forum held June 30, 1997, offered several variations on these two general concepts. The Commission should consider all of the proposals and choose at least one option from each category to be made available to C and F Block licensees.

### III. THE COMMISSION HAS FULL AUTHORITY TO RESTRUCTURE C AND F BLOCK PAYMENT OBLIGATIONS

Generally speaking, 47 U.S.C. § 303 (r) empowers the Commission to make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of the Act, among other things. Additionally, 47 U.S.C. § 4(i) vests the Commission with authority to make rules and regulations not inconsistent with the Act which are necessary to the execution of its functions. Courts have found that the Commission has broad authority to effectuate its statutory responsibility.<sup>3</sup>

With regard to the Commission's specific authority to conduct auctions and to promulgate rules governing those auctions, § 309 (j) establishes the use of competitive bidding in the license process and further enables the Commission to select appropriate rules and procedures that would best serve its policy goals and achieve congressional objectives.<sup>4</sup> Section 309(j)(3)(B) provides for the *promotion of opportunity and competition* by avoiding excessive concentration of licenses and by disseminating licenses *among a wide variety of applicants*, including small businesses, women and minorities. Section 309 (j)(4)(A) directs the Commission to *consider alternative payment schedules and methods of calculation*, including guaranteed installment payments. Section 309(j)(4)(D) provides that to ensure the participation of designated entities in spectrum-based services, the Commission is to *consider* the use of tax certificates, bidding preferences, and *other procedures*.

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<sup>3</sup> *FCC v. Midwest Video Corp.*, 440 U.S. 689, 706 (1979).

<sup>4</sup> See also *In re Implementation of Section 309(j) of the Communications Act--Competitive Bidding, Second Report and Order*, 9 FCC Rcd 2348, 2350, paragraphs 8-9, (1994) (hereinafter "*Second R & O*").

These various provisions, singly and collectively, give the Commission liberal authority to fashion rules which promote congressional directives and concomitant Commission policies. These provisions were the basis for implementation of the installment payment plan and are also the basis for its reform. Just as the Commission had the authority to design the current installment plan, it necessarily has the authority to revise the plan in light of the drastic changes in circumstances which render the current plan ineffective. It is necessary to the functions of the Commission that it be responsive to the changing needs of the industry that it regulates, otherwise, static rules and outdated policies which are shown by time to be imprudent would go unchanged. Section 4(i) provides the Commission with authority to revise its rules, even after the auctions have been held.<sup>5</sup> The D.C. Circuit has reaffirmed the legal doctrine which governs the permissibility of rule changes:

“An agency’s view of what is in the public interest may change, either with or without a change in circumstances,” as long as the agency “suppl[ies] a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored.”<sup>6</sup>

The Commission’s auction rules specifically contemplate that, in the event of changed circumstances, individual licensees could request “grace periods” to defer making installment payments. 47 C.F.R. § 1.2110(e)(4)(ii). This rule was in place prior to the C Block auction and all bidders and prospective bidders were on notice of its existence. Implementation of 47 C.F.R. § 1.2110(e)(4)(ii) could result in some licensees receiving ad hoc restructuring consideration on a case-by-case basis. By developing a consistent set of debt restructuring rules for all licensees, the

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<sup>5</sup> See, *Mobile Communications Corporation of America v. FCC*, 77 F.3d 1399 (D.C. Cir. 1996).

<sup>6</sup> See also, *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C.Cir. 1970).



Commission can assure equitable treatment for all licensees while speeding the delivery of service to the public. Establishment of such a rule of general applicability is clearly within the Commission's authority and discretion.

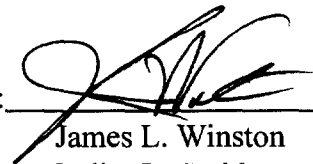
#### **IV. CONCLUSION**

Restructuring debt for C and F Block licensees will speed service to the public and will help fulfill the Commission's statutory obligation to promote business opportunities for designated entities. Urban Comm, therefore, requests that the Commission restructure the debt obligations of the C and F Block licensees and provide such licensees options with respect to payment of their license debt obligations. The Commission has full authority to do all of the above.

Respectfully submitted,

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July 8, 1997

## CERTIFICATE OF SERVICE

I, Kathy Nickens, a secretary in the law firm of Rubin, Winston, Diercks, Harris & Cooke, L.L.P. hereby certify that on July 8, 1997, true copies of the foregoing Reply Comments In the Matter of Broadband PCS C and F Block Installment Payment Issues were hand delivered to the following:

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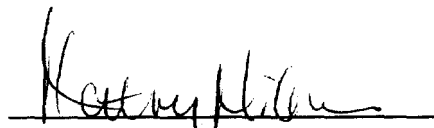
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